Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1688

CITY COUNCIL OF THE CITY OF PHILADELPHIA,
FRANK L. RIZZO, MAYOR
HILLEL LEVINSON, MANAGING DIRECTOR
AND THE CITY OF PHILADELPHIA, *Petitioners*

v.

RESIDENT ADVISORY BOARD OF PHILADELPHIA, et. al.,
Respondents

[Additional Respondents listed inside cover]

SUPPLEMENTAL BRIEF OF PETITIONER CITY COUNCIL OF THE CITY OF PHILADELPHIA, ET. AL.

Mark Jurikson
Deputy City Solicitor
Sheldon L. Albert
City Solicitor
Counsel for Petitioners

201 City Hall
Philadelphia, Pa. 19107
(215) MU 6-6205

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107 (215) 561-4050

ADDITIONAL RESPONDENTS

HOUSING TASK FORCE OF THE URBAN COALITION,

BERNICE DEVINE,

ESTHER SIERRA MENDEZ,

JEAN THOMAS,

MABLE SMITH,

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, RUSSELL BYERS, CARLA A. HILLS

ADDITIONAL PARTIES BELOW

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA,
MULTICON CONSTRUCTION CORPORATION,
WHITMAN AREA IMPROVEMENT COUNCIL,
PHILADELPHIA HOUSING AUTHORITY

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CITY COUNCIL OF THE CITY OF PHILADELPHIA, ET AL., *Petitioners*

v.

RESIDENT ADVISORY BOARD OF PHILADELPHIA, ET AL.

On Petition for a Writ of Certiorari to the UNITED STATES COURT of APPEALS for the Third Circuit

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Petitioner City Council of the City of Philadelphia, Frank L. Rizzo, Mayor, Hillel Levinson, Managing Director and the City of Philadelphia filed their Petition for a Writ of Certiorari in this matter on May 8, 1979. Since the filing of said Petition, two intervening matters have occurred which add substantial weight to Petitioners arguments as to why this Court should grant a Writ of Certiorari. In order to bring these matters to the attention of this Court, Petitioners respectfully submit this Supplemental Brief in accordance with Supreme Court Rule 24(5).

I. THE EXISTING PLANS FOR THE CONSTRUCTION OF THE WHITMAN PARK TOWNHOUSE PROJECT ARE STRUCTURALLY UNSAFE

Petitioner City Council of the City of Philadelphia voted on December 21, 1978 to disapprove the proposed Redevelopment Contract for the 120 Unit Whitman Park Townhouse Project. Part of the basis for said legislative action was a scientific report of Dr. Frederick Kessler of the Engineering Consultant firm of Dames and Moore (A-43). Dr. Kessler reported that the existing construction plans should be substantially modified in order to reduce the extremely high noise levels which exist at the proposed building site. Dr. Kessler stated:

> It is clear from these figures that the southern portion of the property, bounded by Oregon Avenue, Front Street, Shunk Street, and rear yards of the 2nd Street homes should not be developed as a residential land use without extensive noise mitigation. Some alternative noise mitigation approaches are discussed in the following section. All residences constructed in the northern or southern section of the site should be well built with a large outdoor to indoor noise attenuation. Units should be centrally air conditioned (winter and summer) to minimize use of windows. With the windows open, indoor sounds will be too high to be comfortable.
>
> Noise sensitive rooms, i.e., bedrooms, living rooms, dens, etc., should be placed away from the street. Kitchens, laundry rooms, stairways, closets should be placed between noise sensitive rooms and the street to act as noise buffers. (A-50)

Both the District Court and the Third Circuit Court of Appeals totally overlooked Dr. Kessler's recommendation for modification of the existing building plans.

The lower courts have ordered that the 120 unit project be built "as planned". The District Court's January 11, 1979 Order, as affirmed by the Third Circuit Court of Appeals on March 7, 1979, orders that the redevelopment contract (which was disapproved by Petitioner City Council), containing the construction plans be executed with the proposed developer — A & R Development Corp./The Waterford Group, Inc.

During the week of May 20, 1979 Petitioners' legal counsel became aware that the Philadelphia Housing Authority (a state agency), upon the urging of Respondent HUD, had entered into a contract on April 5, 1979 with A & R Development Corp./The Waterford Group, Inc. (See Exhibit #1, attached hereto at pp. 10-16). Said Contract involved the disputed developer performing architectural and engineering work on the existing plans for the 120 unit Whitman Townhouse Project. Even though a Stay of Mandate was issued by the Third Circuit Court of Appeals on April 9, 1979, it has now become clear that A & R Development Corp. proceeded to perform architectural and engineering evaluations on the original project plans with the full knowledge and approval of Respondent HUD.

In a letter dated April 23, 1979, Theo C. Rodgers, President of A & R Development Corp. wrote to Don Morrow, Area Manager for Respondent U.S. Department of Housing and Urban Development (HUD). (See Exhibit #2 attached hereto at pp. 17-19). Said letter reports A & R's progress in evaluating the original plans for the Townhouse Project. This letter makes undisputably clear that the original plans for the 120 unit townhouse project contain many serious and major "discrepancies or inconsistencies". In fact Mr. Rodgers attached to his letter a list of fifteen (15) serious problems or faults which exist in said original plans. Among the major problems cited by A & R are as follows:

1. Grade beam alignment does not agree with bearing wall locations on first floor — B unit.

2. Hall from living room to dining room was less than 3'-0" wide — B unit.
3. Passage from entry hall to stair hall — first floor was less than 3'-0" — B unit.
4. Corbeled brick at second floor adjacent to front entrance is *structurally unsound* — "A" unit.
5. Kitchen layout with range at one end is a *potential hazard.*
6. Master bedroom, second floor, "B" unit — lintels shown over closet and window are *structurally inadequate.* Ceiling of closet is incorrectly shown.
7. First floor slabs are *structurally inadequate* — A & B units.
8. No method is indicated on drawings to support front and rear concrete stoops. (See Exhibit #2 attached hereto at pp. 17-19)

Mr. Rodgers noted that this list is not conclusive.

A & R's Evaluation of the "original plans" adds substantial evidentiary support of Petitioners City Council's decision to disapprove said plans. The fact that A & R has concluded that the Townhouse Plans are "structurally unsound" or "inadequate" gives further emphasis to the need for this Court to grant Petitioners Writ of Certiorari in this matter. It is now unquestionable that the project can not safely be built "as originally planned" and as ordered by the lower courts.

Whether the lower courts will permit an evidentiary hearing as to changes in the project plans is highly unlikely since the District Court previously chose to ignore the proposed structural changes needed to mitigate the extreme problem at the project site.

II. RESPONDENT HUD HAS WITHHELD OVER TWENTY MILLION, THREE HUNDRED THOUSAND DOLLARS OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS DUE THE CITY OF PHILADELPHIA UNTIL CONSTRUCTION OF THE WHITMAN PARK TOWNHOUSE PROJECT COMMENCES

By letter dated May 15, 1979, Respondent HUD has notified Petitioner City of Philadelphia that HUD is withholding 30% of the City's Community Development Block Grant funds for Year V (1979-1980) ". . . until such time as the City commences on-site construction of the Whitman Park Public Housing Project . . ." (See May 15, 1979 letter from HUD attached hereto as Exhibit #3 at pp. 20-22). Respondent HUD further states in this letter that:

> Notwithstanding any other provision of this Grant Agreement, the City is prohibited from obligating or drawing down 30% of its Fiscal Year 1979 Grant unless and until on-site construction has actually begun on the Whitman Park Public Housing Project (PA-2-51); provided that, if a Federal Court enters a final order in *Resident Advisory Board v. Rizzo* which prevents the City from fulfilling this condition, HUD will consider modification thereof.

The City of Philadelphia's Community Development Block Grant funds for Year 5 amounts to $67,748,000. The 30% which Respondent HUD has withheld until construction of the disputed project commences amounts to $20,324,400.

Petitioner City of Philadelphia is in effect being penalized by Respondent HUD for Petitioners' litigation of this matter. The 20 million dollars which HUD has withheld from the City is money which the City of

Philadelphia planned to spend on badly needed housing and community development projects totally unrelated to the 120 Whitman Park Townhouses. Respondent HUD is in effect making a blatant attempt to coerce Petitioner City of Philadelphia to withdraw its Petition for Certiorari in this matter and otherwise cease all litigation concerning this disputed housing project.

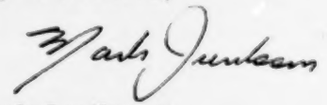
Petitioners are convinced that they have acted in the Public's interest in this matter. The fact that Respondent HUD has withheld over 20 million dollars from the citizens of the City of Philadelphia specifically because Petitioners have exercised their constitutional rights of due process by filing its Petition for Certiorari, is an additional reason as to why this Court should grant said Petition.

The legislature of this country's fourth largest city has acted in good faith in deciding to disapprove the proposed redevelopment contracts for the Whitman Park Townhouse Project. As a direct result of Petitioners filing the instant Petition for a Writ of Certiorari, Respondent HUD has undertaken a course of action which will cause irreparably injury to the citizens of the City of Philadelphia and totally disrupt the City's plans for community development in 1979.

CONCLUSION

For the foregoing reasons, your Petitioners respectfully submit that a Writ of Certiorari should issue to review the Judgment Order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,



Mark Jurikson
Deputy City Solicitor

Sheldon L. Albert
City Solicitor

201 City Hall
Philadelphia, PA 19107
(215) MU6-6205

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 1979, three copies of the Petition for Writ of Certiorari were hand delivered to:

Walter S. Batty, Esquire
Assistant City Attorney
3310 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, Pennsylvania 19106
Attorneys for Respondent HUD

Harold R. Berk, Esquire
Jonathan M. Stein, Esquire
Community Legal Services
Sylvania House
Juniper and Market Streets
Philadelphia, Pennsylvania 19107
Attorneys for Respondent RAD

William F. Hall, Jr., Esquire
994 Curtis Building
Philadelphia, Pennsylvania 19106
Attorney for Respondent HUD

Joseph M. Gindhart, Esquire
2015 Land Title Building
Broad and Sansom Streets
Philadelphia, Pennsylvania 19110
Attorney for WAIC

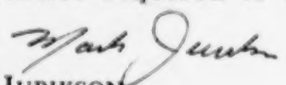
Peter A. Galante, Esquire
1234 Market Street
Philadelphia, Pennsylvania 19107
Attorney for RDA

Harold Cramer, Esquire
Arthur Lefco, Esquire
Fidelity Building, 15th Floor
Philadelphia, Pennsylvania 19109
Attorneys for PHA

Charles W. Bowser, Esquire
1845 Walnut Street
Suite 1300
Philadelphia, Pennsylvania 19103

Solicitor General
Department of Justice
Washington, D.C. 20530

I further certify that all parties required to be served have been served.



MARK JURIKSON
Deputy City Solicitor
Counsel for Petitioner

201 City Hall
Philadelphia, Pa. 19107

Exhibit 1

AGREEMENT FOR ARCHITECTURAL AND ENGINEERING WORK

This Agreement made this 5th day of April, 1979, by and between A & R Development Corporation/The Waterford Group, Inc., a joint venture, hereinafter referred to as the "Contractor" and the Philadelphia Housing Authority, a public body organized and existing pursuant to the law of the Commonwealth of Pennsylvania, hereinafter referred to as "PHA".

Whereas, PHA desires to obtain certain architectural and engineering work for a low-rent public housing project designated Project No. PA-2-51, Whitman Townhouses, consisting of 120 dwelling units and related appurtenances;

And, Whereas, the Contractor will provide such work for PHA, the Contractor and PHA agree as follows:

1. *Identification of Project.* The project for which the work is to be provided by the Contractor is identified as Project No. PA-2-51, Whitman Townhouses in the Annual Contributions Contract between the PHA and the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", which project is situate in the Whitman Urban Renewal Area of the City of Philadelphia.

2. *Compensation.* The Contractor shall be compensated for the work to be performed under this Agreement on a cost reimbursable basis as defined in section 5. In no event shall the total compensation to be paid to the Contractor under this Agreement exceed the maximum amount of $45,000 unless increased by written agreement between the Contractor and PHA

and approved by HUD. Such agreement shall state the changes, if any, in this Agreement and the increase in the maximum amount of compensation to be paid to the Contractor. This Agreement is being entered into between the Contractor and PHA with the expectation that a certain Turnkey Contract of Sale providing for the purchase of the Project by the PHA from the Contractor shall be executed. In such event, any further architectural and engineering work shall be performed under the terms of the Turnkey Contract of Sale. Payment for the work performed under this Agreement prior to the execution of the Turnkey Contract of Sale for which payment has not been made pursuant to this Agreement prior to such execution shall be included in the cost of the work under the Turnkey Contract of Sale and shall be paid for in accordance with the provisions of that contract. In the event that the Turnkey Contract of Sale shall submit to the PHA its detailed invoice showing the cost of the work completed and for which payment is claimed, and upon approval by the PHA and HUD, the invoice will be paid. Thereafter, at thirty (30) day intervals, until either the work is completed or the Turnkey Contract of Sale is executed, Contractor may submit its invoices for payment.

3. *Scope of Work.* The Contractor shall supply all professional and such other services as are necessary to accomplish the following work for the project: rewriting the specifications prepared by the Architects, Trott and Bean for the Project including the requirements for the building materials to be used; and redrawing the following, the site plan, the landscape plan, the construction drawings, and the mechanical drawings.

4. *Time of Work.* The Contractor shall commence the work immediately upon the execution of this Agreement. It is anticipated that 90% of the rewriting of the specifications shall be completed by April 23,

1979, and that 60% of the redrawing of the site plan, landscape plan, construction drawings, and mechanical drawings shall be completed by such date.

5. *Cost of the Work.* The Contractor shall be reimbursed for the costs necessarily incurred in the proper performance of the work in accordance with the following inclusions and exclusions.

a. *Inclusions*

(1) Salaries and wages of Contractor's employees directly employed in doing the work.

(2) Cost of contributions, assessments or taxes for such items as unemployment compensation and social security insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Architect.

(3) Cost of all materials and supplies incorporated in the work.

(4) Reasonable transportation, traveling, and housing expenses incurred in necessary travel to and from the Project site.

(5) Reproduction of drawings and specifications.

(6) Sales or use taxes on all materials and supplies incorporated into the work imposed by any governmental body for which the Contractor is liable.

(7) Minor expenses such as telegrams, long distance telephone calls, expressage and similar petty cash items in connection with the work.

(8) Cost of subcontracts for work performed under this Agreement substantiated by the subcontractors' invoices showing the work done and the charge for the work.

b. *Exclusions*

(1) The cost of the work shall not include any items of Architect's overhead, including salaries or other compensation of Architect's officers, executives, general managers,

estimators, auditors, accountants, purchasing and contracting agents and other employees at the Architect's principal or branch offices except pursuant to 5a.(1).

(2) Any part of the costs of Contractor's principal and branch offices.

(3) Any return on or cost of the Contractor's working capital including interest on the Contractor's capital employed in the work.

(4) Overhead or general expenses of any kind.

(5) Costs due to the negligence of the Contractor, any subcontractor, or anyone directly or indirectly working for them, and for whose acts any of them may be liable including but not limited to correction of defective work.

(6) Kickbacks, rebates or discounts received or receivable in connection with the work.

(7) The cost of any item not specifically and expressly included in section 5.a.

6. *Contractor's Accounting Records.* Records of the Contractor's direct personnel and reimbursable expenses pertaining to the Project shall be kept on a generally recognized accounting basis sufficient to reflect all costs claimed to have been incurred in the performance of the work. The PHA, HUD and the Comptroller General of the United States or their authorized representatives, shall have full and free access to such records, including the right to audit, and to make excerpts and transcripts from such records. These records shall be kept for a period of three years from the date of the final payment made under this Agreement.

7. *Prevailing Wages.* The Contractor and his agents shall pay or cause to be paid to all architects, technical engineers, draftsmen, and technicians employed on any part of the Work under this Agreement not less than the salaries or wages prevailing in the locality, as determined or adopted

subsequent to a determination under applicable State or local law by the Government. The Contractor shall furnish, with each statement submitted for services, a certification that he has paid not less than such rates to his technical personnel. The requirement shall not apply to executive, clerical, and administrative employees.

8. *Withholding of Wages.* In cases (of which the PHA has notice) of underpayment of wages to be paid by the requirement above, the PHA may withhold from the Contractor out of payments due, an amount sufficient to pay the employees involved the differences between the wages required to be paid under section 7. above and the wages actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the PHA for and on account of the Contractor to the respective employees to whom they are due.

9. *Nondiscrimination.* In connection with the performance of work under this Agreement, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, sex, color, religion, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, color, religion, age, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to insert the foregoing provisions in all contracts made by him in connection with the architectural and engineering services called for under this Agreement, except contracts for standard commercial supplies or raw materials.

10. *Officials Not to Benefit.* No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

11. *Interest by Members of Local Authority and Local Governing Body.* No member, officer, or employee of the PHA, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project shall, during his tenure, and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12. *Covenant Against Contingent Fees.* The Contractor warrants that he has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the PHA the right to terminate this Agreement or, at its discretion, to deduct from the compensation payable to the Contractor the amount of such commission, brokerage, or contingent fee.

13. *Assignability.* The Contractor shall not assign or transfer any interest in this Agreement except that claims for monies due or to become due him from the PHA under the Agreement may be assigned with the PHA's and HUD's prior approval to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining members of such partnership approved by HUD.

14. *Termination.* The PHA or HUD may, by seven days written notice to the Contractor, terminate this Agreement either for convenience or for failure of the Contractor to fulfil his obligations under their Agreement. Upon receipt of such notice, the

Contractor shall 1) immediately discontinue all work under this Agreement unless the notice directs otherwise and 2) upon demand of either the PHA or HUD deliver to PHA or HUD all data, drawings, specifications and reports completed by the Architect or in process. Upon termination, the Contractor shall be entitled to compensation for all work performed up to the date of termination in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the PHA and the Contractor have executed this Agreement, the day and year first above written.

Philadelphia Housing Authority

BY _____

A & R Development Corp./The Waterford Group, Inc., a joint venture

BY _____

President: A & R Development Corp.

Exhibit 2

A and R DEVELOPMENT CORPORATION/
THE WATERFORD GROUP, INC.
A JOINT VENTURE

2525 N. Calvert Street
Baltimore, Maryland 21218
(301) 243-0600

April 23, 1979

Mr. Don Morrow, Area Manager
U.S. Dept. of Housing and Urban Development
Philadelphia Area Office
Curtis Building
625 Walnut Street
Philadelphia, Pennsylvania 19106

Attention: Ernest Smollow
Multi-family Representative

Re: WHITMAN PARK TOWNHOUSES
PA 2-51

Gentlemen:

In accordance with the conditions noted in the "Agreement for Architectural and Engineering Work" dated April 5, 1979, by and between the Philadelphia Housing Authority and A and R Development Corporation/The Waterford Group, Inc. — A Joint Venture, we transmit herewith three (3) sets of plans, 60% complete and three (3) sets of specifications — 90% complete, for your review and comment.

There exists many inaccuracies and discrepancies in the original plans and specifications by Trott and Bean and while we have done exhaustive research into these problems, we cannot be assured at the 60% com-

pletion level that they will or will not result in increased costs or changes beyond the original scope of work. In order to expedite the review process, we are enclosing herewith a tabulation of the specific items or areas of concern that may require certain waivers or at least a joint decision by HUD, PHA, and the developer as to the most desirous method to cure the problems.

We are available to meet with you at your earliest convenience and stand ready to complete the plans and specifications in the most expeditious manner.

Sincerely,

Theo C. Rodgers
President
A and R Development Corp.

TCR:lba
Encl:
cc: Judge Broderick, Phila. Housing Auth., Morton Baruch, Victor Villapano, William Hall, Phila. Redev. Auth., Paul Walter, Esq., The Waterford Group Inc.

WHITMAN PARK TOWNHOUSES PA 2-51

The following is noted as discrepancies or inconsistencies in the original contract documents dated October 12, 1970 and certain review comments.

I. Grade beam alignment does not agree with bearing wall locations on first floor — B unit.
II. Bearing wall dimensions are out of scale 2'-0'' ± first floor — B unit.
III. Hall from living room to dining room was less than 3'-0'' wide — B unit.
IV. Passage from entry hall to stair hall — first floor was less than 3'-0'' — B unit.

V. Corbeled brick at second floor adjacent to front entrance is structurally unsound — "A" unit.
VI. Kitchen — counterspace on either side of kitchen sink does not meet M.P.S.
VII. Kitchen layout with range at one end is a potential hazard.
VIII. Storage requirements — does not comply with M.P.S. for convenient outdoor use. Complies with M.P.S. cubic foot requirements if storage under stairs and stair landings is counted.
IX. Master bedroom, second floor, "B" unit — lintels shown over closet and window are structurally inadequate. Ceiling of closet is incorrectly shown.
X. Downspout and gutter arrangement does not work — "B" unit.
XI. First floor slabs are structurally inadequate — A & B units.
XII. No method is indicated on drawings to support front and rear concrete stoops.
XIII. Review comments indicate R-19 insulation required in side walls — this is not an M.P.S. 4900.1 requirement.
XIV. Provision for handicapped in a family 3 bedroom townhouse is not required by M.P.S. 4900.1.
XV. Original specifications call for three courses of tile above edge of tub. This is a potential high maintenance problem when showers are provided.

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* This is not a conclusive list.

Exhibit 3

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
AREA OFFICE
CURTIS BUILDING, 625 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106
May 15, 1979

REGION III
Curtis Building
6th and Walnut Streets
Philadelphia, Pennsylvania
19106

IN REPLY REFER TO:
3.2CM
City of Philadelphia
B-79-MC-42-0012

Honorable Frank L. Rizzo
Mayor of Philadelphia
Philadelphia, Pennsylvania 19107

Dear Mayor Rizzo:

We are pleased to announce the approval of your Year V Application for Community Development Block Grant funds in the amount of $67,748,000.

Enclosed are three copies of Form HUD-7082, Funding Approval, under Title I of the Housing and Community Development Act of 1974, as amended, with attached contract provisions. Please execute this document, return two copies to our office and retain one copy for your files. Copies of the approved Cost Summary are also enclosed.

Also enclosed is a list which indicates those projects and/or activities which are approved conditionally pending environmental assessment.

Please note that in no event should a request for payment be submitted to obtain funds for activities which have been given conditional approval pursuant to 24 CFR 570.311(f) and Section 16(a) of Form HUD-

7082 (Funding Approval under Title I of the Housing and Community Development Act of 1977 as Amended) without the express written authorization of HUD.

The starting date for the City's fifth program year will be May 15, 1979. However, funds may be expended for only those fifth year activities for which there are no conditions.

Detailed in Section 18 of the Year V Funding Agreement are the specific conditions upon which HUD is approving the entitlement application. Conditions I and II relate to revisions to data and strategy statements in the Application itself, while Conditions III through VI relate to actions the City will be required to undertake relative to housing. Conditions III, V and VI preclude the City from utilizing a total of 90% of the Year V Entitlement Grant with 30% increments attached to each of these three conditions. As a result, the City's letter-of-credit will be increased by $6,774,800 or 10% of the Year V Grant upon receipt of the signed HUD-7082 Funding Approval. Additional incremental increases in the letter-of-credit will be executed upon the City's compliance with the three cited conditions.*

C. *Condition III*

Condition III withholds 30% of the Year V funds until such time as the City commences on-site construction of the Whitman Park Public Housing Project. This is required in view of the City's housing assistance needs and the failure of the City to utilize all available resources to provide housing choice for low and moderate income and minority group persons in non-impacted areas.

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* Note — Only sections of pages 1, 5, 8 and 11 of this letter are reprinted here. All other pages of this letter do not specifically relate to the Whitman Park Project.

C. *CONDITION III*

Notwithstanding any other provision of this Grant Agreement, the City is prohibited from obligating or drawing down 30% of its Fiscal Year 1979 Grant unless and until on-site construction has actually begun on the Whitman Park Public Housing Project (PA-2-51); provided that, if a Federal Court enters a final order in *Resident Advisory Board v. Rizzo* which prevents the City from fulfilling this condition, HUD will consider modification thereof.

We trust that the City will take action as expeditiously as possible to comply with the contract conditions and the requirements set forth in the approval letter. Should the Area Office be able to provide you with any assistance in this regard, please do not hesitate to contact us.

Sincerely,

Don Morrow
Area Manager

Enclosures

cc: Mr. John Andrew Gallery